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C O N F I D E N T I A L SECTION 01 OF 02 QUITO 002613

SIPDIS

DEPT PASS USTR BENNETT HARMAN

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TAGS: [EPET](#) [ETRD](#) [ECON](#) [PREL](#) [EC](#)

SUBJECT: TIDE TURNING IN OXY'S FAVOR BUT A LONG WAY TO GO

REF: A. QUITO 2509

[B](#). QUITO 2462

[C](#). QUITO 2418

[D](#). QUITO 2380

[E](#). QUITO 2327

Classified By: Ambassador Kristie A. Kenney, Reason 1.4 (b), (d)

[1](#)1. (C) Summary. The efforts of Occidental Petroleum (Oxy) and the Mission are gathering momentum in blunting misperceptions raised by the Procurador's (solicitor general equivalent) allegations against Oxy. Business chambers, financial analysts and GOE officials are coming to understand what Ecuador has to lose if it nationalizes Oxy's Block 15 oil interests, but more work needs to be done. The Procurador continues to send mixed messages, allegedly seeking a negotiated solution in private while making inflammatory statements calling for the review of the US-Ecuador Bilateral Investment Treaty (BIT) and vigorously defending the national patrimony in public. With Embassy assistance, Oxy is seeking an amicable resolution, using two different tracks. Still, a final resolution will require the Procurador's buy-in, which is by no means assured. In the meantime, Oxy filed its answer to the allegations to the President of state-owned Petroecuador, who assured Emboffs that he would need time to fully and fairly review the matter. End summary.

Public and Opinion Leaders - Getting the Message

[1](#)2. (C) Over the last several days, a number of media have carried stories about the risks of "persecuting" Oxy (quoting business chamber representatives) and expropriating (in another article by a respected financial analyst) Oxy's assets. They warned that Ecuador was putting at risk current trade benefits and a future FTA with the United States. Minister of Economy and Finance Mauricio Yopez publicly warned that Ecuador risks losing USG support in its efforts to obtain financing from multilateral development banks if it did not act fairly in the Oxy case. The Ambassador continues to press for the fair treatment of Oxy through her daily meetings with the GOE, business and opinion leaders, pressing the same message that Ecuador has much to lose, including in its efforts to attract new investment to the country.

The Procurador - Getting Nervous?

[1](#)3. (C) We have also received several reports that Procurador General Jose Maria Borja wants to discuss the case to explain his views, including his desire to reach an agreement with Oxy. He has reached out privately, through intermediaries, to Oxy and the Ambassador. Still, his public comments belie his private overtures. Last week he publicly called on Congress to review the US-Ecuador Bilateral Investment Treaty (BIT). (Note: The earliest Ecuador could file notice of terminating the BIT is 2007; a legal fact that escaped Borja, the GOE's lead attorney.) On September 27, he again claimed to be defending the national sovereignty of Ecuador in his prosecution of cases against Oxy and Canadian oil company EnCana. He is also publicly defending himself against comments from the business chambers. One of the attorneys in Borja's office told econoff that Borja's statements, like his call to review the BIT, had been misunderstood and that he would like the chance to explain himself in a private meeting with the Ambassador. The Ambassador has made clear there will be no meeting with Borja until he changes his public posture in line with what his intermediaries claim to be his real intentions.

[1](#)4. (C) Minister of Economy Yopez and Minister of Government Baca have told the Ambassador that Borja is a reasonable person who will approve a settlement reached by Oxy and the Minister of Energy, who is the person charged with finally deciding the fate of the accusations against Oxy (see reftels). However, past experiences in the Duke Energy and BellSouth cases indicate that Borja may not be true to his word. Still, Borja now appears to be on the defensive. This is likely due in part to Oxy's voluminous response to Petroecuador on the allegations and other efforts to get the full story out in the public. Yopez told the Ambassador on

September 28 that Borja wanted to find a solution and did not want Oxy to leave Ecuador. Yepez and Baca have also been speaking with Borja, whom they now believe is coming to understand the gravity of the situation. Borja also met with Oxy GM Jerry Ellis on September 27, to enlist Oxy in promoting the formation of a commission to review the matter. Pursuing Two Tracks

15. (C) Econoff and Commercial Attach met privately with state-owned oil company Petroecuador President Luis Camacho on September 23. Camacho said that once he received Oxy's response to the allegations, he would take his time to fully and fairly review the matter. He said he would not bow to public or private pressure to speed up his review or be prejudiced against one side or the other. He said he would like to appoint a respected, independent commission to help review the matter, stating that he would receive no help from those within Petroecuador. Camacho believed that, whether or not there was a commission, his review of the matter would not be completed before the October 17 local elections in Ecuador, reducing the possibility that the Oxy case could become an election issue. In a separate meeting between Emboffs and Oxy GM Ellis, he too welcomed the commission approach and hoped to discuss the matter with Camacho.

16. (C) Ellis said that Oxy is also continuing its work with the Ministry of Economy and Finance (MEF) on a possible resolution. Oxy is providing the MEF with a variety of data to allow the GOE to analyze the impact of the transaction between Oxy and EnCana (the most serious allegation against Oxy concerns that transaction). Minister of Economy Yepez told the Ambassador that the MEF hopes to present an offer to Oxy within the next two weeks.

Comment

17. (C) Oxy's side of the story on the allegations lodged against it by the Procurador is finally coming to light in the press. Our education efforts with GOE interlocutors and business chamber leaders also appear to be working. The Procurador's outreach efforts are a good indication that those efforts are having some impact. Oxy continues to say it is willing to talk while also forcefully arguing its strong case. Petroecuador's Camacho and the MEF are sending positive signals that the case can be resolved without declaring a contract nullification and expropriation. Oxy is also sending its public relations representatives from Los Angeles, with whom Post will work with to keep up the positive momentum in the press and with local opinion leaders.

18. (C) It appears that any further official GOE pronouncement on contract nullification will not be made until after the October 17 elections, but it cannot be totally ruled out. The additional time will allow for more discussions between the parties and a cooling off period. We can also use that time to reach out to business, GOE and opinion leaders, many of whom have not yet heard the full story on the matter or do not fully appreciate what is at risk for Ecuador. In the end, the Procurador will also have to be brought on board to finalize any agreement, which is by no means assured. We will continue to encourage Ministers Yepez and Baca to engage with Borja to ensure he will back a fair and rational resolution to the problem that he largely created.

KENNEY